IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:- 27.11.2006

Ram Karan alias Roda and another ...Petitioners

Versus

State of Haryana ...Respondent

CORUM: HON'BLE MR.JUSTICE RANJIT SINGH

Present:- Mr.J.S.Bedi, Advocate for the petitioners.

Mr.Vikas Chaudhri, A.A.G.. Haryana.

RANJIT SINGH, J.

Legal position in regard to summoning a person as an additional accused under the provisions of Section 319 Cr.PC is by now fairly certain/settled and may not call for much detailed discussion. Still the grievances are being routinely made either for and against the order summoning a person to face trial as an accused found innocent during investigation. This may be because the law as settled and fine tuned by various judgments is still required to be applied to the facts in each case. Since it is a matter of law being applied by courts, it can obviously lead to different application making the effected persons aggrieved against such an order. The present one appears to be a case where the accused has been summoned while ignoring the principles laid down in various judicial

pronouncements and hence the grievance by way of present petition. Before noticing these principles governing the exercise of powers under Section 319 of the Code, it would be appropriate to make reference to the facts of this case in brief and see if the principles of law so settled have been correctly applied or not.

One Pyare Lal disappeared from his house on 29.1.2006. Despite vigorous efforts made by his son to search, he could not be traced. Ultimately, FIR was lodged on 30.1.2006 by the son of said Pyare Lal revealing that his father had gone for a stroll on the evening of 29.1.2006 and had not returned thereafter. In the process of tracing his father, the complainant son while proceeding towards Kalka noticed a small gathering near Super Station Service, Ram Nagar, Kalka. On reaching the spot, he noticed a dead body of a person lying there in a vacant shop of Hans Raj, which he identified to be the body of his father Piare Lal. Bleeding injuries with sharp edged weapon were noticed on the body of the deceased. Allegation of murder by some unknown persons was, accordingly made. Expressing his suspicion, the complainant also disclosed in the FIR that his mother had gone to petrol pump of Lachhman Singh searching for her husband when Sanju salesman had told her that her husband was seen going uphill alone. The complainant further disclosed that one person named Roda was seen standing near the Super Service Station at about 8/9 P.M. Disclosing that his father usually shared drinks with Roda and Khila Ram, accusing finger was pointed at them for commission of murder. On 30.1.2006 only statement of Lalit, another son of the deceased, was recorded by the police, who disclosed that he had last seen the petitioners and one Rajinder Kumar on the night of 29.1.2006 while they were having

drinks together. The wife of the deceased while making her statement disclosed that Rajinder Kumar had borrowed a sum of Rs.20,000/- from her husband and when her late husband demanded the same, it led to some acrimony between the two. Accordingly, the petitioners and said Rajinder Kumar were named in the FIR which led to their arrest. During investigation, police recovered blood stained weapon through Rajinder Kumar and also ash of burnt clothes, which he was allegedly wearing at the time of occurrence. No recovery, however, was effected from the petitioners though one disclosure statement is attributed to them that they had used iron rods. The injuries found on the body of the deceased were of incised wounds. Finding no evidence against the petitioners, they both were discharged by the Court of Illaqa Magistrate. They were released from custody and placed in column No.2 in the report under section 173 Cr.PC.

The trial against Rajinder Kumar is in progress. During the course of this trial, statement of PW1 Lalit, son of the deceased was recorded on 21.8.2006 wherein he has repeated his earlier version that he had seen the petitioners, Rajinder Kumar accused and his late father drinking together. A copy of the statement now given by this witness before the Court is annexed with the present petition. It is on the basis of this evidence that the prosecution moved an application summoning the petitioners as accused under Section 319 Cr.PC and Sessions Judge, Panchkula vide his order dated 23.8.2006 has now summoned the petitioners to face trial along with Rajinder Kumar.

Counsel for petitioners has vehemently argued that no case for summoning the petitioners as per the parameters settled by law is made out and has, accordingly, submitted that the impugned order summoning the

petitioners cannot be sustained. Drawing my attention to the statement (Annexure P2) now made by PW1 Lalit, the counsel would contend that he has not attributed any role to the petitioners and his statement is identical to the one, which he had given during the course of investigation. Except for stating that this witness had seen his father, Roda alias Ram Karan, Rajinder Kumar and Raj Kumar taking liquor in the shop of Rajinder tailor, he has not attributed anything to the petitioners. In fact statement of this witness would also reveal that though his father had not returned during the night but he had gone to attend his college on the next morning unmindful about his missing father and he was informed through telephone by his brother when the later discovered the dead body of their father lying near Super Service Station, Kalka.

Would such an evidence be sufficient to attract the sweep of Section 319 Cr.PC to summon the petitioners to face the trial for an offence under Section 302 IPC is a question, which needs answer? As already noticed, the parameters for exercising powers under this Section are almost settled. Mr.J.S.Bedi, learned counsel for the petitioners has drawn my attention to a number of judgments in this regard. Relying upon the law laid down in Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr. 2000 (2) R.C.R. (Criminal) 75, the counsel would contend that though the Court has a discretionary power to summon a person as an additional accused to stand trial but it is not to be exercised on the ground that the Court entertained some doubt about his involvement in the offence. As per the counsel, to summon a person to face trial under Section 319 Cr.PC, the court must have reasonable satisfaction from the evidence already collected. The Hon'ble Supreme Court in the case of Michael Machado (supra) clearly

held as under:-

> "The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused."

In this very judgment, Hon'ble Supreme Court also held that what is conferred on the Court is only a discretion and discretionary power so conferred should be exercised only to achieve criminal justice. Supreme Court went on to observe that it is not that a Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. It is also held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then. In the case of Michael Machado (supra) a detailed reference was made to the case of Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors. 1983 (1) RCR (Crl.) 73 by the Court to observe and to strike a note of caution to saying that this is really an extraordinary power, which is conferred on the

Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. It would be noticeable that Hon'ble Supreme Court in the case of Michael Machado (supra) proceeded to hold that unless the court is hopeful that there is reasonable prospects of the case as against newly brought accused ending in conviction of the offence concerned, the Court should refrain from adopting such a course of action. In Krishnappa v. State of Karnataka 2004 (7) JT 509 = AIR (SC) 4208, Hon'ble Supreme Court while dealing with the powers to summon additional accused has held that the power is an extraordinary power and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom the action has not been taken. Reliance has also been placed on some judgments of this Court as well as of Delhi High Court by the counsel for the petitioners and these have mainly summed up the law on the basis of the ratio laid down in the case of Michael Machado (supra). In a recent decision in the case of Lok Ram v. Nihal Singh, 2006 (2) RCR (Criminal) 707 (SC), Hon'ble Supreme Court had summed up the scope of Section 319 Cr.PC by referring to various judgments including the cases of Michael Machado and Municipal Corporation of Delhi (supra).

The analysis of the judgment aforementioned would show that discretion regarding summoning a person as an additional accused is not to be exercised in routine. This should be exercised sparingly and when done should be by passing a reasoned order. This Section leaves a discretionary power with the Court and is not to be exercised when some doubt is entertained but should be so done after reasonable circumstances emerge from the evidence already collected. It has also been held that there is no

compelling duty on the court to proceed against any person. Suspicion alone is not sufficient to summon the accused and he should be so summoned when there is reasonable prospect of convicting him of the offence charged. As already noticed, Hon'ble Supreme Court has observed that power under this provision is to be exercised to advance the cause of criminal justice.

Let us see if the summoning of the petitioners as accused can be held justified in view of the law laid down and noticed above. While referring to the facts in this case and reasons which had led to the summoning of the petitioners, it was noticed that they have been summoned merely on the basis of the statement of Lalit PW1. Sessions Court while passing the impugned order has referred to the version given by Lalit, which only reveals that he had seen his father taking drinks with the petitioners and Rajinder Kumar. The fact that his father had not returned and whatever was narrated to him by his mother had also been disclosed during investigation. There is no other role or part attributed by this witness to the petitioners. On this basis, Sessions Court has concluded that prima facie offence under Sections 302/201 IPC is made out against the present petitioners. This evidence may just create some suspicion about the involvement of petitioners. This as per the case of Michael Machado (supra) would not be sufficient to exercise power under Section 319 Cr.PC. As per law laid down by Hon'ble Supreme Court, discretionary powers under section 319 Cr.PC are to be exercised when the court finds that there is reasonable prospect of conviction. While exercising discretion, Sessions Court appears to have ignored the parameters of law which are reasonably settled and reiterated in a number of judgments of this Court following the

law laid down in the case of Michael Machado (supra). The discretion to summon the petitioners as accused has apparently been exercised in a routine manner on an application moved by the prosecution. The material, which has formed the basis of summoning the petitioners was already there before investigating agency and thereafter they were found innocent and shown in column No.2. Merely on reiteration of some facts without indicating anything more which may satisfy legal requirement as laid down by Hon'ble Supreme Court may not lead to advancing the cause of criminal justice. This extraordinary power has been exercised in this case without much justification and may call for interference. Counsel for petitioners has drawn my attention to judgments in the cases of Dev Prakash V. State of M.P. 2004 (3) RCR (Criminal) 443, Jaswant Gir V. State of Punjab (2006) 1 Supreme Court Cases (Cri.) 579 and Ved Parkash alias Bhagwan Dia V. State of Haryana 2006 (3) RCR (Criminal) 992 to say that the evidence relied upon by the Sessions Court would not be sufficient for conviction. All these judgments were dealing with the case after conviction and may not strictly be applicable to see if such requirement is to be insisted upon at the time of exercising of power under Section 319 Cr.PC. The standard of proof required to base a conviction is proof beyond reasonable doubt. A “reasonable doubt” does not mean some light, airy or insubstantial doubt. Such strict and stringent standard of proof is not needed for exercising power to summon a person under section 319 Cr.PC If that be the requirement of law at the stage of summoning then nothing would be left thereafter for the court to decide. Accordingly, the ratio in these judgments would not apply. Standard here, as noticed, appears to be a 'reasonable prospect of conviction' and not the standard of strict proof. Suspicion is not

sufficient to hold that there is reasonable prospect of conviction. The evidence on the basis of which the petitioners have been summoned would not reveal the requirement of law of 'reasonable prospect of conviction." Since the legal parameters laid down for summoning the petitioners as an additional accused appears to have been ignored while summoning them, the impugned order cannot be sustained and the same is set aside. The case is remanded back to the Sessions Court to reconsider the application in the light of the law laid down in the case of Michael Machado (supra) and then to decide if sufficient basis was laid down in the evidence to summon the petitioners as additional accused.

Present revision petition is allowed in the above terms.

(Ranjit Singh)
Judge

November 27,2006
AS

Whether to be referred to the Reporter? Yes/No